IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6150 OF 2006

The Kolhapur Aryasamaj Shikshan Sanstha, Kolhapur ....Petitioners
V/s.
The Education Officer (Secondary) Zilla Parishad, Kolhapur & Ors. ....Respondents

Mr.G.S. Godbole i/b Mr.S.S. Tambekar for the Petitioners.
Mrs.M.P. Thakur, AGP for Respondent Nos.1 to 3.
Mr.P.D. Dalvi for Respondent No.4.

CORAM : F.I. REBELLO, &
S.J. VAZIFDAR, JJ.
DATED : 6TH FEBRUARY, 2007.

P.C. :

1. Rule. Heard forthwith.

2. The Petitioners by the present Petition are seeking a writ by way of mandamus to direct the Respondent - State and its officers to forthwith release non-salary grant due and payable to the Petitioners without adjusting interest claim of Respondent No.4 for the alleged delay in payment of pension.

3. Respondent No.4 was in the service of the Petitioners as Head Master. He was suspended on

7.3.1996. He filed the Writ Petition on 21.5.1996 challenging the said order of suspension. During the pendency of the Petition, he superannuated on 31.5.1996.

4. Respondent No.4 earlier had filed the Writ Petition being Writ Petition No.5348 of 1997 in the matter of releasing his pension. This Court noted that there was criminal proceeding pending in view of the order dated 24.11.1997 and directed that if there is acquittal or discharge, the Respondents are directed to release the pension at the earliest and would pay interest at the rate of 12% p.a. Respondent No.4 by an order dated 30.3.1998 was acquitted in the criminal proceedings and consequently was entitled to have his pension released. Respondent No.4 in fact was paid his pension. However at the time the pension was paid, the Government authority took an undertaking from Respondent No.4 that he would not claim any interest as ordered by this Court by an order dated 24.11.1997 in Writ Petition No.5348 of 1997.

5. Respondent No.4 thereafter filed another Writ Petition being Writ Petition No.7294 of 1999. The learned Division Bench by an order dated 26.7.2000 was pleased to direct the Respondents to release the

pension and also pay interest at 12% p.a. from 1.6.1996 to 30.11.1998 within a period of two months from the date of the order, failing which the interest thereafter shall be paid at the rate of 18% p.a. from 1.6.1996 to 30.11.1996 and at the rate of 24% p.a. from 30.11.1996 till the payment in full and final. According to the Petitioners herein, thy were not given any notice neither in Writ Petition No.5348 of 1997 nor Writ Petition No.7294 of 1999. It is stated that pension and gratuity is the responsibility of the State and in these circumstances, the Respondent - State would be liable to comply with the orders passed by this Court on 24.11.1997 and 26.7.2000 and refund the amount deducted from the non-salary grant of the Petitioner.

6. We have heard the learned counsel for the Petitioners and also considered the affidavit in reply filed on behalf of the State.

7. The fact remains that by the order dated 24.11.1997 Respondent No.4 was entitled to receive 12% p.a interest on the pension. That order has not been reviewed and consequently that interest would have to be paid. Similarly order of this Court dated 26.7.2000 has not been reviewed and consequently will

have to be complied with. In our opinion, it cannot be said that the Petitioners herein are entirely blameless. Their conduct also will indicate that non-payment of pension at least partly was on account of the disputes inter-se between the Management. In these circumstances, the ends of justice would be met if the Petitioners are to bear interest on the sum of Rs.2,42,594/- at 12% p.a. till 3.11.1998. Thereafter, considering the duty to pay terminal benefits is of the responsibility of the Respondent - State, the action of firstly calling upon Respondent No.4 to given an undertaking to waive interest in spite of the directions of this Court and subsequently not complying with the order of this Court dated 26.7.2000 the interest burden will have to be borne by the Respondent - State. Hence the following order :-

i). The non-salary grant of the Petitioners would be adjusted at the rate of 12% p.a. upto 3.11.1998. The remaining interest will have to borne by the Respondent - State. The amount deducted from the non-salary grant to that extent be refunded within a period of eight weeks from today.

ii). Respondent Nos.1 to 3 if the amount is not

refunded within eight weeks to pay interest to the Petitioners at the rate of 12% p.a. till payment.

8. Rule is made absolute accordingly. No order as to costs.

(S.J. VAZIFDAR, J.) (F.I. REBELLO, J.)